

ATTACHMENT 3.
Resolution No. 6524

RESOLUTION NO. 6524

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AND THE CITY CLERK TO ATTEST A GROUND LEASE AGREEMENT BETWEEN THE CITY OF SCOTTSDALE AND ASUF SCOTTSDALE, L.L.C. (CITY OF SCOTTSDALE AGREEMENT NO. 2004-119-COS) WITH RESPECT TO THE LEASE OF CERTAIN REAL PROPERTY OF THE CITY; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Scottsdale (the "City") has acquired certain real property (the "Property") located in the City (generally at the southeast corner of McDowell Road and Scottsdale Road and formerly known as the "Los Arcos Mall" site); and

WHEREAS, the City desires to facilitate and encourage the development of a substantial portion of the Property as the site for the ASU Scottsdale Center for New Technology and Innovation (the "Center"); and

WHEREAS, ASUF Scottsdale, L.L.C. ("ASUF"), an Arizona limited liability corporation and an affiliate of the ASU Foundation, is willing to enter into a Ground Lease Agreement with the City pursuant to which ASUF will lease a portion of the Property (the "Leased Premises"), on terms and conditions specified in the Ground Lease Agreement, and undertake the development of the Center on the Leased Premises in accordance with the terms and conditions of the Ground Lease Agreement; and

WHEREAS, the City of Scottsdale Municipal Property Corporation (the "MPC") has agreed to assist the City in financing the acquisition of the Property by, among other things, purchasing the Property from ASUF (which in turn is purchasing the Property from its current owner) and by issuing its excise tax revenue bonds in an amount sufficient to acquire the Property, and by agreeing to sell the Property to the City after its acquisition by the MPC in consideration of the City's agreement to pay to the MPC amounts required to pay debt service on the MPC's bonds when due and for other consideration as specified in proposed City of Scottsdale Agreement No. 2004-120-COS; and

WHEREAS, it appears to be in the best interests of the City to proceed with the lease of the Leased Premises to ASUF as proposed; and

WHEREAS, in furtherance of the intent and purpose of this Resolution, there has been prepared a Ground Lease Agreement, in substantially the form attached hereto as Exhibit "A," to be entered into between the City and ASUF (the "Lease"); and

WHEREAS, the immediate operation of the provisions of this ordinance is necessary for the preservation of the public peace, health and safety, an EMERGENCY is hereby declared to exist and this ordinance shall be in full force and effect from and after its passage by the Council as required by the City Charter;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Arizona, as follows:

Section 1. The City hereby approves the lease of the Leased Premises by the City to ASUF pursuant to the Lease.

Section 2. The terms and provisions contained in the Lease are hereby approved; and the Mayor and Clerk of the City are hereby authorized to execute and attest, respectively, the Lease and to deliver the same to ASUF.

Section 3. The Mayor of the City, the City Clerk, the City Treasurer, and the Financial Services General Manager are hereby each authorized and directed to execute any and all further documents and to take any and all actions that may be necessary or desirable in consummating the transactions contemplated in this Resolution and in the Lease. Any documents specifically approved in this Resolution shall be substantially in the form presented to the Council, with such additions, deletions, and modifications as shall be approved by those persons approving, executing, and delivering the same on behalf of the City.

Section 4. It is necessary to utilize an emergency clause with this Resolution (i) because the opportunity to purchase the Property pursuant to a separate Purchase Agreement between the City and ASUF and to enter into the Lease is subject to certain time constraints and closing requirements imposed by ASUF (and imposed, in turn, upon ASUF by the current owner of the Property) which are outside the control of the City and the City would be unable to take advantage of this opportunity to acquire the Property on the terms and conditions set forth in the Purchase Agreement and to lease the Leased Premises on the terms and conditions set forth in the Lease, absent immediate, effective action; and (ii) to enable the MPC to proceed with the issuance and sale of its bonds, effective as soon as possible, thereby committing the purchaser of the bonds to the interest rates on the bonds, transferring the risk of changes and prevailing market interest rates from the City and the MPC to the purchaser of the bonds, and permitting delivery of and payment for the bonds to occur as soon as possible. The immediate operation of the provisions of this Resolution are therefore necessary for the preservation of the public peace, health and safety of the City. Accordingly, an emergency is hereby declared to exist and this Resolution shall be in full force and effect from and after its passage and approval by the Council of the City, and is hereby exempt from any referendum provisions of the Constitution and laws of the State of Arizona and the City Charter.

PASSED, ADOPTED AND APPROVED by the Council of the City of Scottsdale this 6th day of July, 2004.

ATTEST:

CITY OF SCOTTSDALE, an Arizona
municipal corporation

By: _____
Carolyn Jagger, City Clerk

By: _____
Mary Manross, Mayor

APPROVED AS TO FORM:

By: Joseph R. Bertoldo
Joseph R. Bertoldo, City Attorney